

## **REMARKS / ARGUMENTS**

Claims 1-26 are pending in the present application. Of these claims, 1 and 14 are independent.

Claims 1-4, 7-17 and 20-27 were rejected as being unpatentable over Taylor (US Patent No. 6,254,642) in view of Hasson (US Patent No. 5,658,272). Claims 5, 6, 18 and 19 were rejected as being obvious over Taylor in view of Hasson and further in view of US 2001/0011179 to Adams.

### **Discussion**

Applicant respectfully disagrees with the assertion in the Office Action that the combination of Taylor and Hasson renders independent claims 1 and 14 as being obvious. Specifically, Applicant respectfully disagrees that it would have been obvious to provide a fastener “positioned distal to the expandable structure when the fastener is initially secured to the annular fold of the stomach” since such a combination of Taylor and Hasson would frustrate the express intent of Hasson and, therefore, would not have been obvious.

Hasson is designed to “prevent premature withdrawal of the surgical instrument before the operation is completed.” To this end, Hasson positions the balloon distal to the tissue plane so that a proximal force on the device is resisted by the balloon contacting an anatomical structure such as the distal tissue surface as shown in Hasson.

As to the combination of Taylor and Hasson, the combination could only arguably accomplish the goal of preventing premature withdrawal if the balloon were positioned distal to the fastener (prosthesis) of the combination otherwise the balloon would not prevent premature withdrawal of the surgical instrument as expressly desired by Hasson. A balloon positioned proximal to the prosthesis of Taylor would merely sit within the tubular-shaped esophagus and, thus, would not contact any tissue or tissue plane which

would prevent premature withdrawal of the device. A balloon in the esophagus proximal to the prosthesis would serve no purpose relative to preventing premature withdrawal of the device since the balloon would simply slip along the interior surface of the tubular-shaped esophagus.

Applicant further submits that amended independent claim 1 is allowable over Taylor in view of Hasson since neither reference discloses or suggest “means for evacuating the stomach to deflate the stomach around the expandable structure when the expandable structure is expanded.” Taylor includes vacuum ports 61, however, the ports 61 are merely used to grasp the tissue rather than evacuate the stomach “to deflate the stomach around the expandable structure” as claimed. Nowhere does either reference suggest the claimed “evacuating means.” Applicant further submits that the vacuum ports 61 would not be suited to evacuate the stomach around an expandable structure since they would be immediately covered by tissue since their purpose is to grasp tissue rather than evacuate the stomach.

Applicant submits that amended independent claim 14 is allowable over the combination of Taylor and Hasson for similar reasons in that the references do not disclose or suggest “means for evacuating the stomach to deflate the stomach and draw the stomach to and around the expandable structure to form a gastric reduction pouch with stomach tissue when the expandable structure is expanded.” Neither reference discloses such a step and Applicant submits that it clearly would not have been obvious to somehow configure the combination to accomplish this step since the vacuum ports 61 will become immediately covered by tissue rather than being operable in a manner to evacuate the stomach let alone around an expandable structure as claimed.

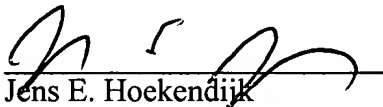
Dependent claims 2-13 and 15-26 are allowable since they depend from allowable independent claims 1 and 14 and because they recite independently patentable features.

### CONCLUSION

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-412-3322.

Respectfully submitted,

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Date

  
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